right wrist and a somewhat ugly scar. The specialist, Dr. Nyun, agreed that such improvement as was likely in the wrist would already had taken place 3½ years after the accident. I will award a sum of $10,000 under this head.

So far as the loss of earning capacity is concerned, this is part of general damages and although Mr. Wong submitted to me that a claim for such loss should be separately and specially pleaded, I do not think that this is so.

Dr. Nyun's opinion was that there had been a permanent loss of capacity of 16% and I see no reason to differ from this figure.

The plaintiff gave evidence that his grip had been weakened, that his arm gives him some pain and that he is unable to lift heavy weights. This accords with Dr. Nyun's evidence.

The average earnings of the plaintiff, both before and after the accident, seem to me to be about $500 a month. Taking 16% of this, we get a figure of $80 per month or $960 a year. He was aged 29 at the time of the accident and 33 this year. He is doing unskilled work as a labourer and I suppose that he would normally expect to be able to continue doing such work until his early 50s.

On the basis of the usual figures used as multipliers, I think that 15 is the correct one to apply. This gives a figure of $14,400 for loss of earning capacity. We thus have $60 for special damages, $10,000 for pain and suffering, $14,400 for loss of earning capacity. This is a total of $24,460. A quarter has to be reduced from this, which reduces it to $18,345.

There will be interest at 3% on the award of special damages from the date of the accident (July 13, 1981) till today and at 6% on the award for pain, suffering and loss of amenities from the date of service of the writ (July 26, 1984) to today. No interest is due on the award for loss of earning capacity. There will be interest at 6% on the total amount due to the plaintiff, starting 21 days from today. Costs to be taxed if not agreed.

Order accordingly.

Solicitors: *Sandhu & Co.; Choo, Chan & Wong.*

BORNEO INSURANCE SDN. BHD. v. MARTIN LOH

[O.C.J. (Roberts C.J.) February 6 & 7, 1985]
[Bandar Seri Begawan – Suit No. 12 of 1984]

Contract – Agency agreement – Claim for insurance premiums collected by agent – Agent did not challenge monthly statements.

Insurance – Premiums – Agency agreement – Claim against agent for premiums collected.

The plaintiff, an insurance company, claims against the defendant for premiums totalling $29,587.35 collected by the defendant as its agent under an agency agreement dated August 20, 1982. Under paragraph 8 of the agreement, the defendant should within 14 days from receipt of the monthly statements from the plaintiff give written notice of any item disputed by him, failing which the balance due from the defendant was assumed to be confirmed as correct by him. The plaintiff's sole witness, its marketing manageress, one Miss Pauline Tan, gave evidence that the amount due from the defendant to the plaintiff was $29,587.35. He received personally from her all the monthly statements from August 1982 to September 1983. At no time did he challenge any of the monthly statements which he received; including the sum of $9,809 brought forward.

Held: (1) the defendant did not exercise his right to challenge the amount brought forward and that the amount of $9,809 is covered by paragraph 8 of the agency agreement;

(2) the learned trial judge was satisfied that the defendant owed the sum of $29,587.35. Judgment with costs for this sum was entered for the plaintiff, with interest at 6% from October 1, 1983.

CIVIL SUIT.

Oliver Phipps for the plaintiff.
Raymond Szetu for the defendant.

Cur. Adv. Vult.

Roberts C.J.: The plaintiff is an insurance company, which is incorporated in Brunei, with a registered office in Bandar Seri Begawan. Its claim is against the defendant, Martin Loh, under an agency agreement, which is dated August 20, 1982.

Under the terms of this agreement, the plaintiff appointed the defendant as one of its agents to transact motorcar insurance, on behalf of the plaintiff, the defendant being a motorcar salesman with a very good reputation.

According to the Statement of Claim, the defendant acted as the plaintiff's agent in accordance with the agency agreement, but failed, in

breach of that agreement, to pay to the plaintiff, the sum of $29,587.35 due to the plaintiff in respect of premiums collected by the defendant on its behalf.

The only witness who is called was Miss Pauline Tan, who has been employed by some years by the plaintiff as marketing manager. She testified that Mr. Martin Loh, the defendant, was one of the agents employed by the plaintiff and that she had handled his business. It was she who had signed the agency agreement of August 20, 1982 on behalf of the plaintiff. It was also signed by Mr. Loh, with whose signature she was familiar.

She said that Mr. Loh had never made more than part payment of the amounts which were due from him to the plaintiff under the agency agreement and which were notified to him by monthly statements of account. The statements of account relating to Mr. Loh were produced in evidence from the period from August 1982 until September 1983, which was the last time when Mr. Loh sold any policies on behalf of the plaintiff.

When she spoke to Mr. Loh, as she did on a number of occasions, about his outstanding debt to the plaintiff, he asked her to let the arrangement continue over into the next month because he was short of money; never, at any stage, did he dispute the accuracy of the monthly statements of account, which were handed to him each month by Miss Tan on behalf of the plaintiff, either verbally or in writing.

The last time she saw him was at Bowstead's, where he was working, after December 1983, when she asked him whether he had received a letter about his outstanding debt to the plaintiff, but he just kept smiling and did not say anything.

She gave evidence that the statements of account, which were produced, were accurate and that the amount shown as due from the defendant to the plaintiff company, $29,587.35 is accurate, and takes into account all the transactions and credits which are relevant.

I should, perhaps, briefly mention the system, as between the plaintiff company and the agents, as I now understand it, though I had some difficulty in following Miss Tan's evidence about it. No doubt that was my fault and not hers.

Putting it in very simple terms, each of the plaintiff's agents is furnished with two sets of books, a cover notebook and a temporary receipt book. These are signed by Miss Tan before they are handed to the agent. The reason for this was that, when a vehicle was to be registered at the Land Transport Department, the Department wish to see an authorised signature of the plaintiff on each of those documents.

When the agent insures a car, he would calculate, according to the value of the car and other factors such as, no claim bonus, the correct premium to be paid for a year's insurance on the car. He would collect that money from the insured and arrange for the car to be registered. When the car had been registered, he would issue a cover note to the insured, which was effective for one month. He would also give the insured a copy of the presigned temporary receipt.

The agent would, thereafter, send a copy of the cover note to the insurance office. On the basis of the information contained in those cover notes, the plaintiff would issue the appropriate insurance policy and prepare a monthly statement of account, relating to each agent and the work he had done, during the month. From the cover note, it was possible for the plaintiff's office to set out in the statement, the gross premium, which had been charged by the agent, and the commission, which is 30% on motor insurance business, which was due to the agent; thus arriving, at the end of each month, at an outstanding balance due to the company from the agent, who was then supposed to settle the account, unless he disputed it in accordance with the agency agreement, within the "credit period", which was 30 days from the receipt of the statement.

The various entries in the statement of account are supported by the cover notes sent in by the agent, which are recorded in a cover notebook kept for each agent, and a policy issue book, showing that policies had been issued against the numbers of registered cars referred to in the cover notes. The agent concerned signed in each case for the insurance policies, two copies of which were issued to him, one for his own records and one to pass on to the insured.

The agency agreement provides, by paragraph 7, that the company would pay commission as set out in the schedule.

Paragraph 8 deals with the settlement of accounts and reads as follows:

"It is mutually understood and agreed, that the Company shall forward to the Agent its monthly statements, covering all business transacted by the Agent for the Company. The Agent shall, within 14 days from receipt of the monthly statements, give written notice to the Company of the items disputed by the Agent in such monthly statements. If the Company does not receive from the Agent written notice of the discrepancies, prior to the due date of the outstanding premium, the Company shall assume that the balance due is confirmed as correct by the agent. Every such monthly statements of account shall, at all times thereafter, be binding and conclusive upon the parties and shall not afterwards be opened and questioned by the Agent, and the Agent shall then be fully responsible to the Company for all net premiums due, according to the statements. The Agent shall pay, in full, all such balances due, as shown by the said statements, within the credit period stipulated in the schedule hereto, without any demand from the Company."

As I have already observed, Miss Tan's evidence, which I accept, is that at no time did the defendant challenge any of the monthly statements which he received. I also accept her evidence that he did receive, personally from her, all the monthly statements from August 1982 up to September 1983. Consequently, he had an opportunity, if he wished to do so, within 14 days from the receipt of each of those statements, to give notice of any items, which were disputed by him. He failed to do so and, therefore, Clause 8 comes into effect, so making the amounts set out in the unchallenged statements due from the defendant to the plaintiff.

The only other matter which I have to deal with, is the question of payments due from Mr. Loh to the plaintiff, in relation to his service with the plaintiff before August 20, 1982, which is the date of the agency agreement under which the action is brought.

It appears, as indeed is obvious from the heading of the August 1982 account which says, "balance brought forward $9,809.52" that Mr. Loh has acted as an agent before August 1982, though Miss Tan was unable to give us any details of this, as she had not handled the matter; though she agreed that he must have been working for the company under some other agreement before that.

I have to consider whether the defendant is liable to pay debts, which he had accrued to the plaintiff before he signed the agency agreement in August 1982. Whether or not he was operating for the company under a similar arrangement is a matter of speculation because I have had no evidence as to it.

What is established, however, by virtue of the statements of account, is that at the end of August 1982, there was outstanding, a sum of $14,288.48. Included in this sum of $14,288.48 was the $9,809, which had been brought forward from September. Mr. Loh did not challenge this debit when the monthly statement for August 1982 was sent to him, in accordance with the agency agreement, which he signed on August 20, in September 1982.

I, therefore, find that he did not exercise his right to challenge the amount brought forward, either in September 1982 or, indeed, at any time thereafter, and that, therefore, this amount is covered by paragraph 8 of the agency agreement.

I am satisfied that the defendant owes the sum of $29,587.35. The statements of account would have supported a slightly larger amount of $29,937.53, but there has been a misprint in the Statement of Claim and I can only award what is sought.

I give judgment for the plaintiff for $29,587.35 with interest at 6% from October 1, 1983. Costs to be taxed.

Claim allowed.

Solicitors: *Susanna Lim & Co.; Szetu & Co.*